

RESOLUTION NO. 2017-17

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF PROWERS, STATE OF COLORADO**

RESOLUTION AMENDING GUIDELINES AND REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST OF PROWERS COUNTY BY AMENDING CERTAIN EXISTING PROVISIONS AND ADDING NEW PROVISIONS REGARDING APPEAL OF 1041 PERMIT REQUIREMENT; CRITERIA FOR INTERGOVERNMENTAL AGREEMENTS; WIND ENERGY; POST-APPROVAL PROCEDURES; DEPOSITS; COST OF STAFF TIME; AND INTERIM REVIEWS.

WHEREAS, pursuant to C.R.S. §§30-11-101(1)(e), 30-11-103, and 30-11-107(1)(e), the Board of County Commissioners of Prowers County, Colorado (hereinafter “Board” or “County”), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the interests of the County and its inhabitants, and is further authorized by *inter alia*, C.R.S. §§30-28-101, *et seq.*, C.R.S. §§30-28-201, *et seq.*, and C.R.S. §§29-20-101, *et seq.*, to adopt regulations for the protection of public health, safety, and welfare of the inhabitants of Prowers County; and

WHEREAS, the Board has specific authority to regulate and designate matters of state interest including areas and activities of state interest and to adopt and amend guidelines and regulations for administration of areas and activities of state interest pursuant to the Areas and Activities of State Interest Act, C.R.S. §§24-65.1-101, *et seq.*, in Prowers County; and

WHEREAS, in the exercise of this authority, by Resolution dated April 19, 2004, as amended by Resolution dated August 17, 2006, following public hearings, the Board adopted and amended “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado;” and

WHEREAS, the Board has determined that the “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado,” as amended, should be further amended to provide for appeal of the requirement of a 1041 permit; to further define the criteria for intergovernmental agreements; to include specific provisions unique to wind energy; to provide post-approval procedures; to provide for replenishing of deposits and security; and to amend the provision regarding the cost of staff time; and

WHEREAS, legal notice of the hearing scheduled on October 24, 2017, in conformance with the requirements of C.R.S. §§24-65.1-404(2)(a), was published in the *Lamar Ledger* on September 21, 2017, and said notice and materials relating to this matter, including the draft amendments to the “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado” contained in ATTACHMENT 2, were made available upon request of the Assistant to the Board of County Commissioners for Prowers County,

Colorado. In compliance with statute, copies of the same were made available for public examination at the Board of County Commissioners Office for Prowers County, Colorado; and

WHEREAS, on October 24, 2016, the Board conducted the public hearing to consider amending the “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado” as advertised, at which hearing various witnesses were heard and exhibits were presented for the Board’s consideration, and testimony was taken from County staff and any and all persons desiring to appear and give such testimony and present evidence; and

WHEREAS, based on the evidence, testimony, exhibits and presentations by County staff and all interested persons, and comments by the County Commissioners, **THE BOARD DOES FIND AS FOLLOWS:**

1. That proper publication and public notice were provided as required by law for the hearing before the Board.
2. That the public hearing was complete, that all pertinent facts, matters and issues were submitted, and all interested persons were heard at the hearing.
3. That all exhibits were received into evidence, which included:
 - a. Copies of the legal notice of the hearing scheduled for October 24, 2017;
 - b. Draft proposed Amendments to the “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado,” as set forth in ATTACHMENT 2;
 - c. Testimony and exhibits presented by the general public and all interested persons, if any; and
 - d. Presentation made by County staff concerning the amendments proposed for the “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado” as contained in ATTACHMENT 2, including any additional minor revisions identified during the public review and hearing process.
4. That the 1041 regulations process has been an ever-evolving process for this County and other counties in Colorado, resulting in identification of matters where the “Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado” should be amended to better serve the public and the County.
5. That the Board has taken into consideration the following:
 - a. A copy of the legal notice of the hearing scheduled for October 24, 2017;

- b. Proof of publication and posting of the legal notice for the hearing scheduled for October 24, 2017;
 - c. The proposed Amendments to the "Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado," as set forth in ATTACHMENT 2;
 - d. Testimony and exhibits presented by all interested persons; and
 - e. A presentation made by County staff concerning the amendments proposed for the "Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado" as contained in ATTACHMENT 2, including any additional minor revisions identified during the public review and hearing process.
6. That based upon the above considerations, the Board has determined that it would serve the best interests of the public and is in the best interests of the health, safety and welfare of the citizens of Prowers County to approve and adopt the proposed amendments to the "Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado" as proposed and set forth in ATTACHMENT 2, and to make such amendments effective immediately upon approval by the Board.
7. That all requirements of law have been met.

NOW THEREFORE, BE IT RESOLVED AND ORDERED:

That the "Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado," as amended on August 17, 2006, are further amended as set forth in ATTACHMENT 2, which is incorporated herein by this reference.

That these said amendments are hereby declared to be effective upon the effective date of this Resolution.

That the County Attorney is authorized to make additional form and style revisions, including but not limited to spelling, numbering, statutory references and other conforming and non-substantive corrections, prior to public distribution and recording.

That the "Guidelines and Regulations For Areas And Activities of State Interest, County of Prowers, State of Colorado," as amended on August 17, 2006, shall be supplemented, replaced, superseded or amended by these amendments only as set forth in ATTACHMENT 2; shall constitute the now currently enacted and effective version; and shall be kept in the office of the Board of County Commissioners for Prowers County, Colorado, there to be made available for public inspection.

BE IT FURTHER RESOLVED, that Ron Cook, duly elected, qualified member and Chair of the Board of County Commissioners, be and hereby is authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as expressed herein.

Upon motion duly made and seconded, the foregoing Resolution was adopted by the following vote:

Commissioner Cook
Commissioner Buxton-Andrade
Commissioner Grasmick

RC
WBA
TG

DONE this 14th day of November, 2017.

BOARD OF COUNTY COMMISSIONERS
OF PROWERS COUNTY, COLORADO

By Ron Cook
Ron Cook, Chairman

By Wendy Buxton-Andrade
Wendy Buxton-Andrade, Commissioner

By Tom Grasmick
Tom Grasmick, Commissioner

ATTEST:

By Jana Coen
County Clerk and Recorder

ATTACHMENT 2

PROPOSED AMENDMENTS TO "GUIDELINES AND REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST, COUNTY OF PROWERS, STATE OF COLORADO

November 14, 2017

A new Section 1.111 shall be ADDED to Chapter 1, Article 1 as follows:

"1.111 Appeal of 1041 Permit Requirement. An applicant may appeal the requirement for obtaining a 1041 permit.

- (1) Within then (10) days following receipt of a completed application for appeal, the Permit Authority shall determine and set an estimated fee in an amount necessary to cover the costs incurred in the appeal and action upon the application for appeal, including all hearings conducted therefor, and shall notify the applicant in writing of the fee. Not later than ten (10) days following receipt of such notice, the applicant shall present to the Permit Authority certified funds in the amount set. Until the fee is paid to the Permit Authority, the application for appeal shall not be further processed. The Permit Authority will determine the final fee at the conclusion of the Appeal Hearing, which must be paid by the applicant before decision on the application for appeal is issued.
- (2) Appeal Process.
 - (a) Initiation of appeal. A written application for appeal must be submitted to the Prowers County Land Use Department on a form provided by the Prowers County Land Use Department. An application fee established by the Board of County Commissioners must be paid when the appeal is submitted.
 - (b) Contents of appeal. The appeal application must include a description of the scope of the proposed activity and evidence that supports the appeal.
 - (c) Scheduling. Upon receipt of the appeal, the Land Use Administrator will schedule the appeal on the next available agenda of the Board of County Commissioners, no later than 60 days after the date on which a properly completed appeal application is filed.

- (d) Notice. Notice shall be consistent with the notice requirements of Section 1.304. Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation at least 14 days before the hearing date.
- (e) Action by the Board of County Commissioners.
 - (i) At the appeal hearing the Board of County Commissioners will take relevant evidence and testimony from the person who filed the appeal, county staff, and any interested person.
 - (ii) The applicant shall have the burden of proving that granting the appeal is consistent with the intent and purpose of these Regulations.
 - (iii) The Board of County Commissioners may refer an appeal to the Prowers County Planning Commission for a recommendation. The decision to refer an appeal to the Prowers County Planning Commission will be made by the Board of County Commissioners within 14 days of the date the appeal was submitted.
 - (iv) The decision of the Board of County Commissioners shall be final.
- (3) The Board of County Commissioners shall consider each of the following review criteria and make findings pertaining to each one which, in their discretion, applies to the appeal.
 - (a) Approval of the appeal will not subvert the purpose or intent of these Regulations.
 - (b) The development or activity has received approval through a state or federal permitting process which has utilized review criteria substantially the same as those contained in this regulation, and which has afforded a similar or greater amount of input by affected citizens and property owners of Prowers County.”

A new Section 1.112 shall be ADDED to Chapter 1, Article 1 as follows:

“1.112 Post-Approval Requirements. Prior to the issuance of a 1041 permit approved under these Guidelines and Regulations, the following conditions must be met, if applicable:

- (1) A development agreement may be required as a condition of approval of the 1041 permit and may include requirements for performance guarantees.
- (2) An agreement concerning decommissioning, abandonment or reuse of the permitted project and related infrastructure may be required as a condition of approval of the 1041 permit.
- (3) A process for period review and revision of the surety requirements and amounts may be required as a condition of approval of the 1041 permit.
- (4) A process for the periodic review and replenishing of deposit monies may be required as a condition of approval of the 1041 permit.

A new Section 2.205(6) shall be ADDED to Chapter 2, Article 2 as follows:

“2.205 Intergovernmental Agreements.

- (6) Intergovernmental agreements entered into in lieu of a permit application and review as provided by the Guidelines and Regulations shall include, but not be limited to the following:
 - (a) A list of submittal requirements to be provided by the applicant.
 - (b) A description of meetings and hearings to be held by the applicant to receive comments from Prowers County citizens.
 - (c) A description of the due diligence actions required by the applicant to address and mitigate concerns regarding the social, economic and well-being concerns of Prowers County citizens.
 - (d) A list of county regulations and requirements for which the applicant's compliance will be required.

- (e) A list of agencies and local governmental entities to which the project must be submitted by the applicant for comments and recommendations.
- (f) A description of the approval criteria to be met by applicant over the life of the project.
- (g) A description of the benefits to Prowers County and its citizens resulting from the project proposed by the applicant.
- (h) A description and extent of financial deposits and security required from the applicant with a schedule of payment and proof of surety.
- (i) A description of the rights and responsibilities of the parties to the agreement.
- (j) A description of the term of the agreement.
- (k) The terms and conditions required of each of the parties to the agreement.
- (l) A list of the Guidelines and Regulations provisions to be complied with by the applicant.”

Section 2.202(1) shall be AMENDED to delete the strikethrough phrase and add the underscored phrase to read in part as follows:

“2.202 Fee and Cost Schedule

- (1) Within fifteen (15) days following receipt of a completed application for a permit, ...”

Section 2.202(4) shall be REPEALED AND REINACTED in its entirety to read as follows:

- “(4) In no event shall the final fee be less than the total of the per hour rate for staff time as adopted annually by the Permit Authority.”

A new Section 2.405 shall be ADDED to Chapter 2, Article 4 as follows:

“2.405 Interim Reviews

- (1) With twenty (20) days notice to the permittee, the Permit Authority may at a time sooner than each annual anniversary date require the permittee to submit a report detailing all past activities conducted by the permittee pursuant to the permit including a satisfactory showing that the permittee has complied with all conditions of the permit and applicable regulations.
- (2) The Permit Authority shall review the report set forth in Section 2.405(1) within thirty (30) days from the date of submittal thereof. If the Permit Authority determines that the permittee is likely to have violated the provisions of the permit and/or applicable regulations, it shall consider the matter at a scheduled public hearing. If the Permit Authority determines at the public hearing that the permittee has violated the provisions of the permit and/or applicable regulations, the Permit Authority may suspend and/or revoke the permit in accordance with Section 2.403.
- (3) At an interim review, the Permit Authority may review the financial deposits and security and request that additional financial deposits and security be provided by the permittee payable to the County of Prowers.”

A new Section 6.303(3) shall be ADDED to Chapter 6, Article 3 as follows:

“6.303 Submission Requirements.

- (3) Wind power plants must meet the following standards:
 - (a) All towers must be set back at least 750 feet from property lines and public rights-of-way.
 - (b) The wind generator turbines and towers must be painted or coated a non-reflective white, grey or other neutral color.
 - (c) Facilities must not be artificially illuminated unless required by the FAA.
 - (d) Facilities must not be used to display advertising.
 - (e) Electrical controls must be wireless or underground and power lines must be underground except where the electrical collector wiring is brought together for

connection to the transmission or distribution network,
adjacent to that network.

- (f) Noise generated from the wind power plant must be no more than at a level determined by the Prowers County Land Use Department.
- (g) The operator of the plant must minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the plant.
- (h) Towers for wind generators must be constructed of a tubular design and include anti-climb features.
- (i) The facility design must use best practices available to protect wildlife.”